IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 8 OF 1991

The State of Maharashtra .. Appellant

versus

Anil Aba Nikam .. Respondent

...

Mr.D.P. Adsule, APP for the State.

None for the respondent.

CORAM : V.M. KANADE, J

DATED : 24th November 2004.

ORAL ORDER:-

1. Heard the learned APP appearing on behalf of the State. None for the respondent.

2. The State is challenging judgement and order passed by JMFC, Wai. By the said judgement and order dated 28th September 1990 in regular Criminal case

no.61/87. The trial Court convicted the accused u/s.89, 112, 42(1) and 123 of the Motor Vehicles Act and sentenced him to pay fine of Rs.500/- and default to suffer Si for a period of two months. The respondent was acquitted of the charge u/s.304A, 279, 337 of the IPC.

3. Brief facts :- On the date of the incident, the accused was driving a kerosene tanker and had proceeded from Bombay to Satara. There were 7 lady passengers who were travelling in the said tanker. According to the prosecution, the accused lost control of the tanker since it was being driven at high speed and left the road and fell down into a ditch. The accused and the cleaner jumped out of the vehicle. However, the lady passengers were injured and out of the seven passengers in the tanker, one died on the spot and other died subsequently. Five other ladies received minor injuries. The prosecution has examined one of the passengers. PW no.1 Nandkumar Sasane is a rickshaw driver who arrived at the scene of the offence after the incident and without preparing the spot panchnama. PW no.2 Kamble was one of the passengers who was travelling in the said tanker. She has stated that at the site where the incident took

place, two trucks came from the opposite direction and the driver turned the vehicle which went off the road. The driver and the cleaner jumped out of the tanker and vehicle fell into a ditch. Apart from this evidence, there is no other witness examined by the prosecution. The other two witnesses which have been examined viz. PW no.3 Vijay Shinde and PW no.4 Mahipati Mane are the Investigating Officers who investigated the said crime.

4. From the evidence of PW no.2, it cannot be said that the accident had taken placed due to rash and negligent driving of the accused. On the contrary, it appears that the accused tried to avert an accident which would have taken steps if he had not turned the vehicle on the right hand side in which if the accused had not turned the vehicle. There would have been a head on collusion between two trucks and possibly all the passengers would have died. Thus, in my view the trial Court has properly appreciated the evidence and has acquitted the accused of the offence punishable u/s.304A 279 and 337 of the IPC. Thus, there is no reason to interfere in the said judgement and order passed by the trial Court.

5. Appeal is dismissed.

V.M. KANADE, J